IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 1769 OF 2004

1. Abdul Latif Abdul Majid]
2. Jahanara Abdul Latif]
both Indian citizen,]
residing at G-3,]
Patra Chawl,]
Nawroji Hill Road,]
Bombay-400009]..Petitioners

Vs.

1. The Deputy Controller]
of Rationing]
(Implementation)]
Mumbai, office of the]
Controller of Rationing]
Roy Insurance Building]
5th floor, 14 J.Tata Rd]
Churchgate,]
Mumbai-400020]
]
2. State of Maharashtra]
at the instance of]
Sr.Inspector of Police]
'I' Branch SB-1,]
C.I.D. Mumbai]..Respondents

....

Mr.R.A.Shaikh i/b Jafar B.Shaikh
for Petitioners
Mr.K.R.Belosey AGP for Respondents

....

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : JUNE 15,2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. Rule. By consent rule made returnable forthwith. Heard Mr.Shaikh, the learned counsel for the petitioners and Mr.Belosey, the learned AGP for the Respondents.

2. The petitioners are challenging the action of the respondents whereby their ration card bearing No.2162 dated 20.10.1998 came to be seized and the said ration card has not been returned to them till today. The said card was attached to Ration Shop No.3-A-70. It is the case of the respondents that as per prima facie enquiry made by the police, the petitioners are not citizens of India and as only citizens of India are entitled to food grains on concessional rate, the rationing department decided to cancel the ration card issued to the petitioners.

3. The petitioners stated that they are citizens of India by birth and they reside permanently at Mumbai at the address mentioned in the cause title of the petition. Petitioner No.1 was married to Petitioner No.2 more than 25 years ago. Both of them have Indian passports. The passport number of the petitioner no.1 is H-538980 and the passport

number of petitioner no.2 is H-538971.

4. Mr.Belosey has submitted that holding of Indian passports by the petitioners cannot be considered to be conclusive proof of the petitioners being citizens of India. In support of this contention, he has placed reliance on the decision dated 12.9.2002 of a Single Judge of this Court in **First Appeal No.976 of 2002 (Motimiya Rahimmiya Vs. The State of Maharashtra)** along with other appeals. On the other hand, Mr.Shaikh, the learned counsel for the petitioners has placed reliance on the decision of the Division Bench of this Court dated 12.12.2002 in **Writ Petition No.2925 of 2002 (Mr.Salamat Ali s/o Haji Usman Ali Vs. State of Maharashtra and Anr.)**.

5. We have perused the decision in the case of **Motimiya (supra)** and it is noticed that in the said case, the appellants have sought declaration that their deportation was illegal, whereas in the present case, the petitioners are only seeking that their ration card be returned to them. In the peculiar facts of the case of **Motimiya (supra)**, as the appellants sought declaration regarding their

citizenship, the Court observed that it was obligatory upon the appellants to prove that they were born in India and that their parents were of Indian origin. As the appellants failed to produce any documents in support of their claim, except the passport, these observations were made.

6. In the decision relating to **Motimiya (supra),** reliance was placed upon the judgment in the case of **Salamat Ali (supra).** In the case of **Motimiya (supra),** the learned Judge observed that the judgment of the Division Bench in the case of **Salamat Ali (supra)** is not applicable to the case of **Motimiya.** It is further observed that in the case of **Salamat Ali**, the petitioner was required to file a writ petition against the refusal of the Rationing Authority to return the petitioner's ration card on the ground that as per the investigation conducted by the Crime Investigation Branch, the petitioner is Bangaladeshi. From the very observation of the learned Single Judge, it is seen that the facts relating to the case of **Motimiya and Salamat Ali (supra)** were entirely different. However, the facts relating to the present case and that of **Salamat Ali** are identical.

7. In the present case, both the petitioners have produced their original passports bearing Nos.H-538980 and H-538971 for our perusal. Besides this, petitioner no.1 has also produced Identity Card bearing No.MT/04/020/298517 issued by the Election Commissioner of India. In view of the fact that petitioner no.1 who is the husband of petitioner no.2, holds Election Card as well as both the petitioners hold Indian Passports issued by the Regional Passport Officer, Mumbai and the fact that till date, no steps have been taken by the respondents for cancellation of said passports and other documents placed on record by the petitioners, we find no justification in the action of the Deputy Controller of Rationing (Implementation) Mumbai in not returning the ration card to the petitioners on the ground that as per the prima facie investigation conducted by the police the petitioners are not Indian citizens but Bangladeshis.

8. We accordingly dispose of the writ petition by the following order:

(i) The Deputy Controller of Rationing (Implementation) Mumbai is directed to return the Ration Card of the Petitioners or issue fresh Ration Card to the Petitioners within five weeks from today.

(ii) As and when steps are taken by the respondents for cancellation of the passports of both the petitioners and if ultimately the passports of the petitioners are cancelled, it would be open to the respondent-authorities to take appropriate action against the petitioners for seizure of the ration card.

(iii) No order as to costs.

[F.I.REBELLO,J.]

[SMT.V.K.TAHILRAMANI,J.]